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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 11, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANDY ACE WEIMER,

Plaintiff,

v.

SHERIFF DEPARTMENT CITY
SPOKANE WA; BADGE #592051
STOLZ,

Defendants.

NO. 2:23-CV-0045-TOR

SECOND ORDER GRANTING
MOTION TO DISMISS

BEFORE THE COURT is Defendants' Motion to Dismiss Per FRCP

12(b)(2), (5), and (7). ECF No. 6.

The Court reopened this matter when it came to its attention that the Clerk's Office committed a docketing error and Plaintiff was not receiving pleadings that were filed in this matter. On July 14, 2023, the Court reopened the case and had the Clerk's Office send Plaintiff the relevant pleadings and set a deadline to respond to the Motion to Dismiss by August 15, 2023. ECF No. 16. Plaintiff

1 responded on August 7, 2023. ECF No. 17. Defendants filed a Reply on August
2 10, 2023. With the briefing complete, this issue is therefore ripe for review.

3 Defendants move to dismiss the Complaint for improper service and an
4 improper party. ECF No. 6. Plaintiff's response does not show otherwise.

5 A court has jurisdiction over a defendant only where a defendant is properly
6 served under Federal Rule of Civil Procedure 4. *Direct Mail Specialists, Inc. v.*
7 *Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988). A defendant
8 may challenge the service of process made by a plaintiff. Fed. R. Civ. P. 12(b)(5).
9 Once challenged, the plaintiff has the burden to establish that service of process
10 was valid under Rule 4. *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004).
11 While liberally construed, a plaintiff must demonstrate substantial compliance with
12 Rule 4. *Direct Mail Specialists*, 840 F.2d at 688.

13 As relevant here, a person may be served by either “following state law for
14 serving a summons in an action brought in courts of general jurisdiction … [or]
15 delivering a copy of the summons and of the complaint to the individual personally
16 … or delivering a copy of each to an agent authorized or by law to receive service
17 of process.” Fed. R. Civ. P. 4(e). A local government entity may be served by
18 either “delivering a copy of the summons and of the complaint to its chief
19 executive officer” or “serving a copy of each in the manner prescribed by that

1 state's law for serving a summons or like process on such a defendant." Fed. R.
2 Civ. P. 4(j).

3 First, there is no evidence Plaintiff substantially complied in properly
4 serving the "Spokane Sheriff Department City Spokane WA", presumably the
5 Spokane County Sheriff's Department. Fed. R. Civ. P. 4(j); RCW 4.28.080(2). In
6 any event, Spokane County is the proper party as the legal entity to be sued, not the
7 Spokane Sheriff Department City of Spokane WA. Fed. R. Civ. P. 12(b)(7); RCW
8 36.01.010. Therefore, the Court dismisses the action against the "Sheriff's
9 Department City Spokane WA" with prejudice as it is the wrong party and was not
10 properly served.

11 Second, Plaintiff contends he served "Badge # 592051 Stolz" by leaving a
12 copy at the prosecutor's front desk. ECF No. 17 at 1, ¶ 3. Plaintiff's admission
13 shows that he did not properly serve Deputy Stolz. In any event, Deputy Stolz
14 declaration states that he has never been served a copy of the Complaint and
15 summons for this case. *See* ECF No. 8.

16 Therefore, the Court dismisses the action against Deputy Stolz without
17 prejudice.

18 **ACCORDINGLY, IT IS HEREBY ORDERED:**

19 1. Defendants' Motion to Dismiss Per FRCP 12(b)(2), (5), and (7) (ECF
20 No. 6) is **GRANTED**.

2. Plaintiff's Complaint against Defendant Sheriff Department City

Spokane WA is DISMISSED with prejudice.

3. Plaintiff's Complaint against Defendant Stolz Badge #592051 is

DISMISSED without prejudice.

The District Court Executive is directed to enter this Order and another

Judgment, furnish copies to the parties, and **CLOSE** the file.

DATED August 11, 2023.



THOMAS O. RICE
United States District Judge